

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Bobby Colston,

Plaintiff,

v.

Wells Fargo Bank, National
Association, in representative
capacity as trustee;
Cost Plus, Inc., a California
Corporation;
and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Bobby Colston complains of Defendants Wells Fargo Bank, National Association, in representative capacity as trustee; Cost Plus, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from a spinal cord injury, cannot walk, and uses an electric wheelchair for

1 mobility.

2 2. Defendant Wells Fargo Bank, National Association, in representative
3 capacity as trustee, owned the real property located at or about 1999 Fremont
4 Blvd., Seaside, California, in August 2016.

5 3. Defendant Wells Fargo Bank, National Association, in representative
6 capacity as trustee, owns the real property located at or about 1999 Fremont
7 Blvd., Seaside, California, currently.

8 4. Defendant Cost Plus, Inc., owned the Cost Plus Furniture ("Cost
9 Furniture") located at or about 1999 Fremont Blvd, Seaside, California, in
10 August 2016.

11 5. Defendant Cost Plus, Inc., owns the Cost Plus Furniture ("Cost
12 Furniture") located at or about 1999 Fremont Blvd, Seaside, California,
13 currently.

14 6. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein,
19 including Does 1 through 10, inclusive, is responsible in some capacity for the
20 events herein alleged, or is a necessary party for obtaining appropriate relief.
21 Plaintiff will seek leave to amend when the true names, capacities,
22 connections, and responsibilities of the Defendants and Does 1 through 10,
23 inclusive, are ascertained.

24
25 **JURISDICTION & VENUE:**

26 7. This Court has subject matter jurisdiction over this action pursuant to
27 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
28 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1 8. Pursuant to supplemental jurisdiction, an attendant and related cause
2 of action, arising from the same nucleus of operative facts and arising out of
3 the same transactions, is also brought under California's Unruh Civil Rights
4 Act, which act expressly incorporates the Americans with Disabilities Act.

5 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
6 founded on the fact that the real property which is the subject of this action is
7 located in this district and that Plaintiff's cause of action arose in this district.
8

9 **FACTUAL ALLEGATIONS:**

10 10. The Plaintiff went to Cost Furniture in March 2016 to shop.

11 11. Cost Furniture is a facility open to the public, a place of public
12 accommodation, and a business establishment.

13 12. Paths of travel are one of the facilities, privileges, and advantages
14 offered by Defendants to patrons of Cost Furniture.

15 13. In August 2016, although there were shelves and merchandise aisles
16 open to customers for shopping, the path of travel in and throughout these
17 merchandise aisles was not accessible to wheelchair users because of the
18 configuration of the store and also because the defendants had a practice of
19 placing merchandise and merchandise display on the route of travel restricting
20 passage to far less than 36 inches in width.

21 14. Currently, although there are shelves and merchandise aisles open to
22 customers for shopping, the path of travel in and throughout these
23 merchandise aisles is not accessible to wheelchair users because of the
24 configuration of the store and also because the defendants have a practice of
25 placing merchandise and merchandise display on the route of travel restricting
26 passage to far less than 36 inches in width.

27 15. Plaintiff personally encountered these violations and they denied him
28 full and equal access.

1 16. These barriers caused Plaintiff difficulty and frustration.

2 17. The defendants have failed to maintain in working and useable
3 conditions those features required to provide ready access to persons with
4 disabilities.

5 18. The violations identified above are easily removed without much
6 difficulty or expense. They are the types of barriers identified by the
7 Department of Justice as presumably readily achievable to remove and, in fact,
8 these barriers are readily achievable to remove. Moreover, there are numerous
9 alternative accommodations that could be made to provide a greater level of
10 access if complete removal were not achievable.

11 19. Plaintiff is and has been deterred from returning and patronizing Cost
12 Furniture because of his knowledge of the illegal barriers that exist. Plaintiff
13 will, nonetheless, return to assess ongoing compliance with the ADA and will
14 return to patronize Cost Furniture as a customer once the barriers are
15 removed.

16 20. Given the obvious and blatant violation, the plaintiff alleges, on
17 information and belief, that there are other violations and barriers on the site
18 that relate to his disability. Plaintiff will amend the complaint, to provide
19 proper notice regarding the scope of this lawsuit, once he conducts a site
20 inspection. However, please be on notice that the plaintiff seeks to have all
21 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
22 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
23 he can sue to have all barriers that relate to his disability removed regardless of
24 whether he personally encountered them).

25 21. Additionally, on information and belief, the plaintiff alleges that the
26 failure to remove these barriers was intentional because: (1) these particular
27 barriers are intuitive and obvious; (2) the defendants exercised control and
28 dominion over the conditions at this location and, therefore, the lack of

1 accessible facilities was not an “accident” because had the defendants
2 intended any other configuration, they had the means and ability to make the
3 change.

4
5 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
6 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
7 Defendants.) (42 U.S.C. section 12101, et seq.)

8 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint.

11 23. Under the ADA, it is an act of discrimination to fail to ensure that the
12 privileges, advantages, accommodations, facilities, goods and services of any
13 place of public accommodation is offered on a full and equal basis by anyone
14 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
15 § 12182(a). Discrimination is defined, inter alia, as follows:

- 16 a. A failure to make reasonable modifications in policies, practices,
17 or procedures, when such modifications are necessary to afford
18 goods, services, facilities, privileges, advantages, or
19 accommodations to individuals with disabilities, unless the
20 accommodation would work a fundamental alteration of those
21 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 22 b. A failure to remove architectural barriers where such removal is
23 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
24 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
25 Appendix “D.”
- 26 c. A failure to make alterations in such a manner that, to the
27 maximum extent feasible, the altered portions of the facility are
28 readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs or to ensure that, to the
2 maximum extent feasible, the path of travel to the altered area and
3 the bathrooms, telephones, and drinking fountains serving the
4 altered area, are readily accessible to and usable by individuals
5 with disabilities. 42 U.S.C. § 12183(a)(2).

6 24. Shelves and display units allowing self-service by customers at stores
7 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An
8 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

9 25. Here, the failure to provide accessible paths of travel in and throughout
10 the merchandise aisles is a violation of the law.

11 26. A public accommodation must maintain in operable working condition
12 those features of its facilities and equipment that are required to be readily
13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 27. Here, the failure to ensure that the accessible facilities were available
15 and ready to be used by the plaintiff is a violation of the law.

16 28. Given its location and options, plaintiff will continue to desire to
17 patronize Cost Furniture but he has been and will continue to be discriminated
18 against due to the lack of accessible facilities and, therefore, seeks injunctive
19 relief to remove the barriers.

20
21 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
22 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
23 Code § 51-53.)

24 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.
27
28

1 30. Because the defendants violated the plaintiff's rights under the ADA,
2 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
3 Civ. Code § 51(f), 52(a).)

4 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
5 discomfort or embarrassment for the plaintiff, the defendants are also each
6 responsible for statutory damages, *i.e.*, a civil penalty. (Cal. Civ. Code §
7 55.56(a)-(c).)
8

9 **PRAYER:**

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
20

21 Dated: September 6, 2016

CENTER FOR DISABILITY ACCESS

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24 By: _____
25 Mark Potter, Esq.
26 Attorneys for Plaintiff
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